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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,424	07/09/2004	GREGORY A. KAEPP	81105266DIV	4423

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EXAMINER

HURLEY, KEVIN

ART UNIT PAPER NUMBER

3611

DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/710,424	<b>Applicant(s)</b> KAEPP ET AL.	
	<b>Examiner</b> Kevin Hurley	<b>Art Unit</b> 3611	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 March 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-6 include the use of the word “for” which indicates intended use. A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

If Applicant(s) desire to give the phrase patentable weight, the Examiner respectfully recommends Applicant(s) remove “for” from the phrase where intended use is not desired.

3. In claims 4-6, it is noted that the “bumper assembly” is recited only as an work object. “Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim.” *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, “[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims.” *In re Young*, 75 F.2d 966, 25 USPQ 69 (CCPA 1935) (as restated in *In re Otto*, 312 F.2d 937, 136 USPQ 458, 459 (CCPA

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1963)).

4. Claims 4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith et al. (6,260,874).

Smith et al. discloses an access door 10 for concealing a tubular hitch receiver mounted within a bumper assembly of an automotive vehicle, wherein said bumper assembly has a bumper cover with an aperture for accessing not only an exterior portion, but also an interior portion of the hitch receiver, with an outer surface and an inner door further having an attaching said inner surface, with said attaching bracket being adapted for telescopic engagement with said hitch receiver, and with said access door being sized so as to said access door having surface, with said access bracket mounted to engage said bumper cover and extending about the periphery of said aperture, so as to engage said bumper cover and extending about the periphery of said aperture, so as to generally close the entirety of said aperture, thereby concealing said hitch receiver, said access door further comprising a spring loaded latch 39.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

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claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (6,139,044) in view of Morrison.

Smith et al. discloses a bumper assembly having a bumper cover 50 with an aperture for accessing not only an interior portion, but also an exterior portion of a hitch receiver 42.

Smith et al. fails to disclose providing an access door engaged to the receiver.

Morrison discloses a method for providing an access door for concealing a hitch receiver including providing an access door 10 having an outer decorated surface 24 and an inner surface, with said access door further having an attaching bracket 30 mounted to said inner surface, with said bracket being adapted for engagement with said hitch receiver, and with said access door being sized so as to engage with said bumper cover and extending about the periphery of said aperture, so as to generally close said aperture, thereby concealing said hitch receiver; and installing said access door upon said vehicle by engaging said attaching bracket with said hitch receiver, thereby placing the access door in contact with the bumper cover at the periphery of said aperture.

It would have been obvious at the time the invention was made to apply the method disclose by Morrison to the bumper assembly disclosed by Smith et al. in order to cover up and

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decorate the hitch receiver when not in use.

8. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al., as applied to claims 1-2 above, and further in view of Randall (3,596,926).

Smith et al., as modified above, discloses the claimed invention except the access door is not tethered to the bumper assembly.

It is well known in the art, as taught by Randall, to tether a cover to a towing vehicle, in order to prevent loss of the cover.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Smith et al. by tethering the door to the bumper, in view of Randall, in order to prevent loss of the door.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. '874 in view of Randall.

Smith et al. discloses the claimed invention except the access door is not attached to a tether.

It is well known in the art, as taught by Randall, to attach a tether 36 to a cover 11 in order to prevent loss of the cover.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Smith et al. by attaching a tether to the cover, in view of Randall, in order to prevent loss of the cover.

*Response to Arguments*

10. Applicant's arguments filed 16 March 2005 have been fully considered but they are not persuasive.

Regarding claim 1, applicant has noted that in amended claim 1, applicant's bumper assembly has a bumper cover with an aperture for accessing not only an interior portion of a hitch receiver but also an exterior portion of the hitch receiver. However, this part of the claim is merely intended use. There has been no structural limitation added to the claim. As noted above, a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). Furthermore the limitation is contained in the preamble and not recited as part of the process. The preamble of claim 1 merely describes what the method is for and does not add limitations to the recited process. If the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction. *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165 (Fed. Cir. 1999). See also *Rowe v. Dror*, 112 F.3d 473, 478, 42 USPQ2d 1550, 1553 (Fed. Cir. 1997)

Similarly, in claim 4, applicant has merely amended the intended use of the work object, neither which add any limitations to the claimed structure. See paragraph 3 above.

***Conclusion***

11. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Hurley whose telephone number is 571-272-6646. The examiner can normally be reached on Monday-Friday 9:30-5:00.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 571-272-6651. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Kevin Hurley  
Primary Examiner  
Art Unit 3611

May 14, 2005